



98TH GENERAL ASSEMBLY

State of Illinois

2013 and 2014

HB5638

by Rep. Christian L. Mitchell

SYNOPSIS AS INTRODUCED:

New Act

Creates the Employment Background Check Act. Provides that employers may not conduct criminal history inquiries with respect to an applicant for employment until after the employer has received an application from and interviews an applicant. Provides an exemption to permit background checks when an applicant's criminal history directly relates to the position of employment sought or the occupation for which a license is required. Permits questions concerning convictions during interviews. Authorizes remedies. Effective January 1, 2015.

LRB098 17893 JLS 53017 b

FISCAL NOTE ACT
MAY APPLY

A BILL FOR

1 AN ACT concerning employment.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 1. Short title. This Act may be cited as the
5 Employment Background Check Act.

6 Section 5. Findings. The General Assembly finds that it is
7 in the public interest to give Illinois employers access to the
8 broadest pool of qualified applicants possible, to ensure that
9 all qualified applicants are properly considered for available
10 employment opportunities, and to create pathways that
11 encourage and contribute to the rehabilitation of our citizens
12 who have criminal history records. Employment is essential to
13 the rehabilitation and reintegration of individuals into the
14 community, the prevention of recidivism, and making our
15 communities and their residents safer and more economically
16 secure.

17 Section 10. Definitions. As used in this Act:

18 "Applicant" means a person considered by an employer when
19 identifying applicants for employment, including, but not
20 limited to, a person who asks to be considered for employment,
21 or who requests information from an employer regarding
22 potential employment, or who is pursuing employment with an

1 employer in response to some indication that the employer may
2 have employment opportunities available. The term also means
3 any person seeking licensure for an occupation for which a
4 license is required.

5 "Employee" means a person hired by an employer.

6 "Employer" means a public or private entity or person, or
7 the agents or affiliates thereof, that employs one or more
8 persons.

9 "Employment" means any occupation or vocation.

10 "License" means any license, permit, certificate, or
11 registration required to be issued by the State of Illinois,
12 its agencies, or another private or quasi-governmental
13 licensing body before a person may engage in, pursue, or
14 practice an occupation.

15 "Licensing authority" means a person, board, commission,
16 or department of the State of Illinois, its agencies, or
17 another private or quasi-governmental licensing body
18 responsible by law for the licensing of persons for
19 occupations.

20 "Occupation" means any occupation, trade, profession, or
21 vocation for which a license is required to be issued by the
22 State of Illinois, its agencies, or another private or
23 quasi-governmental licensing body.

24 Section 15. Employer background check; applicants for
25 employment.

1 (a) An employer may not, on the face of an employment
2 application or through any other means, inquire about or into,
3 request information about, consider, or require disclosure of
4 an applicant's criminal history record directly or indirectly
5 until the employer determines the applicant to be qualified for
6 the employment opportunity and interviews the candidate or, if
7 there is no interview, makes a conditional offer of employment
8 to the applicant. An employer may orally ask a candidate about
9 criminal convictions during an interview or, if there is no
10 interview, once the employer has deemed the applicant qualified
11 for employment.

12 (b) The limitations set forth in subsection (a) of this
13 Section do not apply to an employer who is required to
14 disqualify an applicant from employment because of State or
15 federal law or regulation.

16 (c) This Section does not prohibit an employer from
17 notifying an applicant that a law or regulation requires the
18 employer to disqualify the applicant. Upon request of the
19 applicant, the employer shall provide to the applicant a copy
20 of the relevant law or regulation.

21 Section 20. Relation of criminal history record to
22 employment or occupational licensure.

23 (a) No person shall be disqualified from public or private
24 employment nor from pursuing, practicing, or engaging in any
25 occupation for which a license is required solely or partly

1 because of a prior conviction of a crime or crimes, or a
2 criminal history involving an alleged offense of which the
3 person was not convicted, unless the conviction or the criminal
4 history directly relates to the position of employment sought
5 or the occupation for which a license is required,
6 notwithstanding any other State or federal law or regulation to
7 the contrary.

8 (b) An employer or licensing authority shall consider the
9 following when determining whether a conviction or criminal
10 history relates to the public or private position of employment
11 sought or the occupation for which a license is required:

12 (1) the nature and seriousness of the crime or crimes
13 for which the person was convicted or arrested; and

14 (2) the relationship of the crime or crimes to the
15 position of employment sought or the occupation for which a
16 license is required.

17 (c) A person who has been convicted of a crime or crimes
18 that directly relate to the employment sought or the occupation
19 for which a license is required shall not be disqualified from
20 the employment or occupation if the person can show evidence of
21 rehabilitation. Evidence of sufficient rehabilitation
22 includes:

23 (1) a copy of a release order from the relevant
24 correctional institution or facility;

25 (2) evidence showing compliance with all terms and
26 conditions of probation or parole;

1 (3) evidence showing that the person has not been
2 convicted of a crime within one year since his or her
3 release from a correctional institution or facility; or

4 (4) a copy of documents showing completion of probation
5 or parole.

6 (d) An employer or licensing authority shall also consider
7 any evidence presented by an applicant as follows and shall
8 encourage applicants to submit such evidence:

9 (1) the circumstances surrounding the applicant's
10 commission of the crime or crimes;

11 (2) the age of the applicant at the time the crime or
12 crimes were committed;

13 (3) the length of time elapsed since the crime or
14 crimes were committed; and

15 (4) all other evidence of rehabilitation presented by
16 the applicant, including letters of reference.

17 Section 25. Additional applications. In deciding whether
18 to promote, discipline, suspend, or terminate an employee or
19 otherwise affect the terms or conditions of employment as a
20 result of an employee's criminal history record, an employer
21 shall consider evidence in the same manner and as required in
22 Section 15. In considering denying, revoking, or suspending a
23 license of a person as a result of a criminal history record, a
24 licensing authority shall consider evidence in the same manner
25 and as required in Section 15. This Section does not apply when

1 there exists a State or federal law or regulation to the
2 contrary.

3 Section 30. Violations; remedies. A complaint or grievance
4 alleging a violation of Section 15 or Section 25 shall be
5 processed and adjudicated in accordance with the Illinois Human
6 Rights Act. The Illinois Department of Human Rights shall
7 investigate an alleged violation of Section 15 or Section 25 by
8 a public or private employer in accordance with the Illinois
9 Human Rights Act and impose penalties when a violation has
10 occurred as provided for in the Illinois Human Rights Act.

11 Section 99. Effective date. This Act takes effect January
12 1, 2015.